

AMENDMENT TO CHAPTER 160 – COMMERCIAL ZONE

PROPOSED FIRST READING – JANUARY 25, 2013

Proposed Second Reading – February 22, 2013

Passed: February 22, 2013

§ 160-5. Commercial Zone.

EXISTING:

- A. Use regulations. Unless herein provided, no building or premises shall be used or any building or structure be hereafter erected, altered or repaired in the Commercial Zone except for one or more of the following uses:

- (1) Any use permitted in the Residential Zone.
- (2) Apartments. One apartment in a building used for other commercial purposes. Apartment buildings are prohibited.
- (3) Coffee shop having no more than 10 seats serving over the counter nonalcoholic beverages, bagels and/or pastries.
- (4) Antique shop.
- (5) Vehicle filling or service station, subject to the following requirements:
 - (a) When such use abuts the side and/or rear line of a lot in any Residential Zone, a solid wall or substantial, solid fence five feet in height shall be constructed and maintained along said lot line.
 - (b) When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street intersection of the front and side street lines of the lot, and such driveways shall not exceed 25 feet in width.
 - (c) Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building limit line; and all service, storage or similar activities in connection with such use shall be conducted entirely within the premises.
 - (d) Light vehicle repair work may be done at a vehicle filling station (no body or fender repair permitted).
 - (e) A lot shall not be used for a vehicle filling station if it is within 300 feet of a public or private school, a public park or playground or a hospital.
- (6) Vehicle parts or supply store.
- (7) Bakery.
- (8) Bank or trust company.
- (9) Barbershop.
- (10) Beauty shop.
- (11) Book, newspaper and magazine store, provided that no adult books or pornographic literature or material is offered for sale or viewing.
- (12) Building supply store (retail) and warehouse.
- (13) Business office.
- (14) Church, convent or monastery.
- (15) Confectioner, provided that goods prepared on the premises shall be offered for sale on the premises and at retail.
- (16) Dairy products store.
- (17) Delicatessen.
- (18) Drugstore.
- (19) Eleemosynary and philanthropic institutions.
- (20) Express office.
- (21) Florists.
- (22) Fruit store.
- (23) Funeral parlor or undertaking establishment.
- (24) Furniture store.
- (25) Gift shop.
- (26) Grocery store.
- (27) Hand laundry.
- (28) Hardware store.
- (29) Hospital, nursing and care home, medical and dental clinics.
- (30) Motel/hotel.
- (31) Household appliance store, provided that there shall be no radio phonograph or other speaker located outside of such store or designated or arranged as an attention-calling device to attract passersby.
- (32) Jewelry store.
- (33) Laundromat or launderette.
- (34) Laundry pickup station for work to be done elsewhere.

PROPOSED:

A. Use regulations. Unless herein provided, no building or premises shall be used or any building or structure be hereafter erected, altered or repaired in the Commercial Zone except for one or more of the following uses:

- 1) Any use permitted in the Residential Zone**
- 2) Retail store or personal services shop (not including activities requiring outdoor use of power tools or animal treatment and/or sale).**
- 3) Professional offices and banks.**
- 4) Motels/hotels.**
- 5) Utility buildings.**
- 6) Educational, religious and fraternal/service organizations.**
- 7) Vehicle filling or service station, subject to the following requirements:**
 - (a) When such use abuts the side and/or rear line of a lot in any Residential Zone, a solid wall or substantial, solid fence seven feet in height shall be constructed and maintained along said lot line.**
 - (b) When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street intersection of the front and side street lines of the lot, and such driveways shall not exceed 25 feet in width.**
 - (c) Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building limit line; and all service, storage or similar activities in connection with such use shall be conducted entirely within the premises.**
 - (d) A lot shall not be used for a vehicle filling station if it is within 300 feet of a public park or playground or a hospital.**

EXISTING:

(35) Farmers' market.

(a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

FARMERS' MARKET -An open outdoor market setting whereat fresh agricultural items, horticultural items, baked goods, seafood and/or other fresh food items that have been locally grown, produced or processed by vendors who are members of the Fenwick Island Farmers' Market may be sold.

FENWICK ISLAND FARMERS' MARKET - The nonprofit organization consisting of community volunteers and local growers, which has been sanctioned by the Town Council of the Town of Fenwick Island and the Delaware Department of Agriculture.

RULES AND REGULATIONS OF THE FENWICK ISLAND FARMERS' MARKET - The rules and regulations imposed by the Fenwick Island Farmers' Market nonprofit organization.

VENDORS - Persons or entities selling only agricultural, horticultural, baked goods, seafood and/or other fresh food items that they themselves have grown, produced or processed.

[1] Individual vendors operating outside the established hours of the Fenwick Island Farmers' Market will be permitted to sell local items purchased from members of the Fenwick Island Farmers' Market.

[2] All vendors must be members of the Fenwick Island Farmers' Market.

[3] All vendors must also receive a business license from the Town of Fenwick Island to operate individually outside the established hours of the Fenwick Island Farmers' Market.

[4] Proof of membership in the Fenwick Island Farmers' Market must be submitted at the time of application for a business license.

(b) Permitted locations. Farmers' markets will be only permitted on vacant, unimproved lots, which shall be at least 100 feet by 100 feet in size (either individually or combined), in the Commercial Zone in Town.

(c) Regulations.

[1] If a vendor is not the record owner of the vacant, unimproved lot where the farmers' market will be located, the vendor must submit to the Town Manager at the time of licensing written proof that the record owner consents to the operation of a farmers' market on the vacant, unimproved lot in question. If a vendor is the record owner of the vacant, unimproved lot in question, then proof of ownership must be submitted to the Town Manager at the time of licensing.

- [2] Vendors shall comply with all local, county, state and other health laws, rules or regulations pertaining to their operation.
- [3] Vendors must provide for the removal of all waste generated by or in connection with the operation of the farmers' market. Such waste removal shall include, but not be limited to, the removal of all recyclable materials for the designated purpose of recycling .
- [4] Farmers' markets shall be operated on a seasonal basis only, from May 1 through October 31 of any calendar year.
- [5] All meat, seafood, dairy and baked products sold at a farmers' market must meet the safety and quality control requirements of the rules and regulations of the Fenwick Island Farmers' Market.
- [6] No live animals of any kind, except seafood, may be sold, kept or slaughtered at a farmers' market.

PROPOSED:

8) Farmers' market. (NUMBER CHANGE ONLY – NO CHANGE IN CONTENT)

(a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

FARMERS' MARKET - *An open outdoor market setting whereat fresh agricultural items, horticultural items, baked goods, seafood and/or other fresh food items that have been locally grown, produced or processed by vendors who are members of the Fenwick Island Farmers' Market may be sold.*

FENWICK ISLAND FARMERS' MARKET - *The nonprofit organization consisting of community volunteers and local growers, which has been sanctioned by the Town Council of the Town of Fenwick Island and the Delaware Department of Agriculture.*

RULES AND REGULATIONS OF THE FENWICK ISLAND FARMERS' MARKET - *The rules and regulations imposed by the Fenwick Island Farmers' Market nonprofit organization.*

VENDORS - *Persons or entities selling only agricultural, horticultural, baked goods, seafood and/or other fresh food items that they themselves have grown, produced or processed.*

[1] Individual vendors operating outside the established hours of the Fenwick Island Farmers' Market will be permitted to sell local items purchased from members of the Fenwick Island Farmers' Market.

[2] All vendors must be members of the Fenwick Island Farmers' Market.

[3] All vendors must also receive a business license from the Town of Fenwick Island to operate individually outside the established hours of the Fenwick Island Farmers' Market.

[4] Proof of membership in the Fenwick Island Farmers' Market must be submitted at the time of application for a business license.

[5] No license fee shall be charged for members of the Fenwick Island Farmers' Market.

(b) Permitted locations. Farmers' markets will be only permitted on vacant, unimproved lots, which shall be at least 100 feet by 100 feet in size (either individually or combined), in the Commercial Zone in Town.

(c) Regulations.

[1] If a vendor is not the record owner of the vacant, unimproved lot where the farmers' market will be located, the vendor must submit to the Town Manager at the time of licensing written proof that the record owner consents to the operation of a farmers' market on the vacant, unimproved lot in question. If a vendor is the record owner of the vacant, unimproved lot in question, then proof of ownership must be submitted to the Town Manager at the time of licensing.

[2] Vendors shall comply with all local, county, state and other health laws, rules or regulations pertaining to their operation.

[3] Vendors must provide for the removal of all waste generated by or in connection with the operation of the farmers' market. Such waste removal shall include, but not be limited to, the removal of all recyclable materials for the designated purpose of recycling .

[4] Farmers' markets shall be operated on a seasonal basis only, from May 1 through October 31 of any calendar year.

[5] All meat, seafood, dairy and baked products sold at a farmers' market must meet the safety and quality control requirements of the rules and regulations of the Fenwick Island Farmers' Market.

[6] No live animals of any kind, except seafood, may be sold, kept or slaughtered at a farmers' market.

EXISTING:

(46) Restaurant or eatery as herein defined, subject to the following requirements:

(a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

BAR - A commercial establishment, not part of a restaurant, whose primary activity is the sale of alcoholic beverages to be consumed on the premises. "Bars" include taverns, taprooms, nightclubs, dance halls, dance clubs, lounges, pubs, cabarets, private clubs, bottle clubs and similar facilities serving alcoholic beverages.

BAR AREA - The floor space in any restaurant that is used primarily for the service or consumption of alcoholic beverages for patrons waiting to be seated in the permanent seated dining area. It shall include, but not be limited to, any bar counter and the contiguous floor and seating area where alcoholic beverages are dispensed or consumed, together with all other portions of the patron area except the permanent seated dining area, whether contiguous to the bar or not. A counter in a "bar area" where food is served is not considered part of the permanent seated dining area.

EATERY - A commercial establishment whose primary activity is carry-out food services. If indoor seating is provided, it shall be limited to a maximum of 35 patrons.

OUTSIDE SERVICE AREA - A porch, patio, deck or area of land or buildings which is not enclosed on all sides with permanent structural walls and roofing and which has a floor level no higher than three feet above ground level, is not more than 700 square feet in area and which is used for seated dining only in conjunction with a restaurant or eatery. No part of any outside service area may be located in any setback area and may not eliminate parking spaces to achieve sufficient space for outside service area.

PATRON AREA - The area of a restaurant open to the public as patrons and exclusive of kitchen, storage areas and rest rooms.

PERMANENT SEATED DINING AREA - The floor space in any restaurant where tables and chairs and/or booths are provided for serving complete meals to seated patrons. The floor space of any outside service area shall not be included as part of a restaurant's permanent seated dining area.

RESTAURANT - A commercial establishment with a patron area of less than 4,000 square feet and which is regularly used and kept open for the purpose of serving complete meals, as referred to in the Delaware Code, to patrons for consideration and which has seating and tables for dining and suitable kitchen facilities connected therewith under the charge of a chef or cook. The service of only such foods as snacks, sandwiches, salads, pizza, hamburgers, etc. at anytime in the evening are not considered complete meals.

(b) Requirements.

[1] No bar, as defined, shall be allowed in Fenwick Island.

[2] No bar area, as defined shall be allowed in any outside service area.

[3] Alcoholic beverages may not be served at an eatery.

[4] In-car or drive-through service may not be provided by an eatery.

[5] A restaurant may have a bar area as defined where stand-up consumption of alcoholic beverages for patrons waiting to be seated is allowed, provided that the number of patrons in the bar area does not exceed the Fire Marshal's occupancy limit for that area and such bar area is located on the same floor level as the permanent seated dining area.

[6] Stand-up consumption of alcoholic beverages is not allowed in the permanent seated dining area, including any outside service area.

[7] All tables and chairs in the permanent seated dining area of a restaurant shall be maintained and located in an accessible and usable configuration at all times and may not be temporarily moved so as to increase any bar area.

[8] Music or entertainment, live or recorded, shall not be allowed in any outside service area.

[9] Neither entertainment, except music, nor dancing may be offered in a restaurant or its bar area, either through advertisement or by providing a temporary or permanent dance floor.

[10] All windows and doors of any restaurant or bar area shall remain closed except for the passage of patrons when music is being played.

[11] A minimum of 85% of the patron area must be dedicated as a permanent seated dining area.

[12] A restaurant may not serve alcoholic beverages in the morning before 9:00 a.m. or in the evening later than 1:00 a.m. or later than the time when the offering of complete meals in the permanent seated dining area ends, whichever is earlier. Hours of operations for any restaurant or eatery outside service area shall be no earlier than 8:00 a.m. and no later than 11:00 p.m., including set-up and final clean-up. In the case of a restaurant or eatery that includes outside service area, such outside service may be suspended or revoked if there have been three or more cases during a calendar year of violations of any Town ordinances. Oral and written notice of each such violation will be given to the licensed restaurant or eatery owner. Such revocation may be immediate, deferred to the entire season for the following year, or both.

[13] No restaurant or eatery may operate without a valid certificate of compliance and establishment license as described in Chapter [100](#), Licensing.

PROPOSED:

9) Restaurant or eatery as herein defined, subject to the following requirements:

(a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

BAR - A commercial establishment, not part of a restaurant, whose primary activity is the sale of alcoholic beverages to be consumed on the premises.

BAR AREA - The floor space in any restaurant that is used primarily for the service or consumption of alcoholic beverages for patrons waiting to be seated in the permanent seated dining area. It shall include, but not be limited to, any bar counter and the contiguous floor and seating area where alcoholic beverages are dispensed or consumed, together with all other portions of the patron area except the permanent seated dining area, whether contiguous to the bar or not. A counter in a "bar area" where food is served is not considered part of the permanent seated dining area.

EATERY - A commercial establishment **where food is prepared and served to the public.**

OUTSIDE SERVICE AREA - A porch, patio, deck or area of land or buildings which is not enclosed on all sides with permanent structural walls and roofing and which has a floor level no higher than three feet above ground level, is not more than 700 square feet in area and which is used for seated dining only in conjunction with a restaurant or eatery. No part of any outside service area may be located in any setback area and may not eliminate parking spaces to achieve sufficient space for outside service area.

PATRON AREA - The area of a restaurant open to the public as patrons and exclusive of kitchen, storage areas and rest rooms.

PERMANENT SEATED DINING AREA - The floor space in any restaurant where tables and chairs and/or booths are provided for serving complete meals to seated patrons. The floor space of any outside service area shall not be included as part of a restaurant's permanent seated dining area.

RESTAURANT - A commercial establishment with a patron area of less than 4,000 square feet and which is regularly used and kept open for the purpose of serving complete meals, as referred to in the Delaware Code, to patrons for consideration and which has seating and tables for dining and suitable kitchen facilities connected therewith under the charge of a chef or cook. The service of only such foods as snacks, sandwiches, salads, pizza, hamburgers, etc. at anytime in the evening are not considered complete meals.

(b) Requirements.

[1] No bar, as defined, shall be allowed in Fenwick Island.

[2] No bar area, as defined shall be allowed in any outside service area.

[3] In-car or drive-through service may not be provided by **a restaurant.**

[4] A restaurant may have a bar area as defined where stand-up consumption of alcoholic beverages for patrons waiting to be seated is allowed, provided that the number of patrons in the bar area does not exceed the Fire

Marshal's occupancy limit for that area and such bar area is located on the same floor level as the permanent seated dining area.

[6] Stand-up consumption of alcoholic beverages is not allowed in the permanent seated dining area, including any outside service area.

[7] All tables and chairs in the permanent seated dining area of a restaurant shall be maintained and located in an accessible and usable configuration at all times and may not be temporarily moved so as to increase any bar area.

[8] Music or entertainment, live or recorded, shall not be allowed in any outside service area except for occasions approved by Town Council.

[10] All windows and doors of any restaurant or bar area shall remain closed except for the passage of patrons when music is being played.

[11] A minimum of 85% of the patron area must be dedicated as a permanent seated dining area.

[12] A restaurant may not serve alcoholic beverages in the morning before 9:00 a.m. or in the evening later than 1:00 a.m. or later than the time when the offering of complete meals in the permanent seated dining area ends, whichever is earlier. Hours of operations for any restaurant or eatery outside service area shall be no earlier than 8:00 a.m. and no later than 11:00 p.m., including set-up and final clean-up. In the case of a restaurant that includes outside service area, such outside service may be suspended or revoked if there have been three or more cases during a calendar year of violations of any Town ordinances. Oral and written notice of each such violation will be given to the licensed restaurant owner. Such revocation may be immediate, deferred to the entire season for the following year, or both.

b) Certificates of compliance for restaurants or eateries.

1. No establishment license will be issued for a restaurant or eatery as defined in Chapter 160, Zoning, unless it first receives a valid Certificate of Compliance from the Building Official indicating compliance with all applicable Town codes. The procedures related to a Certificate of Compliance will be the same as described for an establishment license in § 100-4 through §100-16 of Chapter 100, Licensing, except for the following:

a. The words "Building Official" will be substituted for the words "Town Manager."

b. The words "Certificate of Compliance" will be substituted for the word "license."

c. In addition to the information required in § 100-4A(1) through (8), the applicant for a Certificate of Compliance will provide the following:

i. A floor plan showing the dimensions, square footage and location of the patron area, permanent seated dining area, outside service area and bar area as defined in § 160-5A(8)(b).

ii. The number of patrons that can be seated in the permanent seated dining area and the outside service area.

iii. The hours in which complete meals will be offered as described in § 160-5A(8)(b)[12].

iv. Copies of existing Delaware Alcoholic Beverage Control Commission licenses and applications therefor and Fire Marshal permits.

2. All existing restaurants and eateries must apply for a certificate of compliance on or before September 1, 1996, or at the time of application for a building permit under Chapter 61, whichever comes sooner. Authorization by the Town Council of the issuance of a Certificate of Compliance to a restaurant conducting business as of June 21, 1996, which does not conform to the requirements of Chapter 160, Zoning, will be based on conditions existing as of June 21, 1996. Such authorization will document the specific type(s) and degree(s) of nonconformance allowed (i.e., grandfathered) to existing and future owners of such restaurants and eateries.
3. Any modifications to the floor plan described in § 160-5A(8)(b) must be submitted to the Building Official prior to implementation to determine whether a new Certificate of Compliance and/or building permit is required.
4. A Certificate of Compliance must be renewed each year and/or whenever there is a change in the ownership of a restaurant or eatery.

EXISTING:

(55) Townhouses:

- (a) The average minimum lot area per dwelling unit shall be 5,000 square feet.
- (b) Lot frontage, measured at the front building limit line, for individual dwelling units of a townhouse may be reduced to not less than 16 feet.
- (c) For the purpose of the side yard regulations, a townhouse building shall be considered as one building on one lot and shall have minimum side yards of seven feet. Any side yard adjacent to the line of a lot in a single-family Residential District shall not be less than 10 feet. Any side yard adjacent to a street shall be not less than 15 feet.
- (d) Depth of front and rear yards of a townhouse must have an aggregate of not less than 40 feet. Front yards shall be not less than 25 feet. Distribution of the required aggregate of the front and rear yards total will be subject to site plan review and approval. Any rear yard adjacent to the line of a lot in a single-family Residential District shall be not less than 10 feet.
- (e) Detached garages or carports shall not be permitted except as shown on the approved site plan, with specific approval given for same in site plan review.
- (f) Unless otherwise restricted by district regulations, not more than four dwelling units shall be included in any one townhouse building, with no overall outside wall dimensions of more than 85 feet.
- (g) Required off-street parking space of two spaces per family dwelling unit shall be provided on the lot of each dwelling unit or within an on-site parking area within the common area with approval subject to site plan review.
- (h) No family unit shall be so designed or constructed that would locate any part of one family unit above another family unit.
- (i) Any issue or item involving townhouses that is not specifically covered by § 160-5 shall be governed by § 160-4C.
- (j) Commercial buildings and townhouses, as defined herein, may be constructed so as to extend over more than one lot area in which event the side yard requirements shall apply only to the perimeter of the building or the nearest building of the cluster to the adjacent side property line.
- (k) A townhouse is defined as a single-family dwelling and may not be used for any other use which is not permitted in the Residential Zone.
- (l) Floor area ratio. For a townhouse building, the maximum floor area ratio shall be 70%.

PROPOSED:

10) Townhouses:

- a) The average minimum lot area per dwelling unit shall be 5,000 square feet.
- b) Lot frontage, measured at the front building limit line, for individual dwelling units of a townhouse may be reduced to not less than 16 feet.
- c) For the purpose of the side yard regulations, a townhouse building shall be considered as one building on one lot and shall have minimum side yards of seven feet. Any side yard adjacent to the line of a lot in a single-family Residential District shall not be less than 10 feet. Any side yard adjacent to a street shall be not less than 15 feet.
- d) There shall be a front setback of not less than 25 feet and a rear setback of not less than 10 feet for all construction including decks and steps. For a townhouse building, the maximum floor area ratio shall be 70%.
- e) Detached garages or carports shall not be permitted.

- f) Unless otherwise restricted by district regulations, not more than four dwelling units shall be included in any one townhouse building, with no overall outside wall dimensions of more than 85 feet.
- g) Required off-street parking space of two spaces per family dwelling unit shall be provided on the lot of each dwelling unit or within an on-site parking area within the common area with approval subject to site plan review.
- h) No family unit shall be so designed or constructed that would locate any part of one family unit above another family unit.
- i) Any issue or item involving townhouses that is not specifically covered by § 160-5 shall be governed by § 160-4C.
- j) Commercial buildings and townhouses, as defined herein, may be constructed so as to extend over more than one lot area in which event the side yard requirements shall apply only to the perimeter of the building or the nearest building of the cluster to the adjacent side property line.
- k) A townhouse is defined as a single-family dwelling and may not be used for any other use which is not permitted in the Residential Zone.

EXISTING:

(61) Auctions

PROPOSED: (renumber section only)

11) Auctions. **(CHANGE ONLY IN NUMBER (10) AND SECTIONS INDICATED IN (d) and (e)**

(a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

AUCTION HOUSE - Any premises within the Commercial Zone where personal or real property is sold by auction to the highest bidder by a professional auctioneer.

PROFESSIONAL AUCTIONEER - Every person engaged in the business of crying sales of real or personal property on behalf of other persons for profit. A professional auctioneer must be licensed as an auctioneer by the State of Delaware and the Town of Fenwick Island. All professional auctioneers must be insured to the extent required by the State of Delaware and Delaware law.

REAL ESTATE AUCTION - An auction whereat any real property within the Town of Fenwick Island is sold to the highest, qualified bidder. Real estate auctions must be conducted by a professional auctioneer and may be, but are not required to be, held on the real property being sold at auction.

(b) Regulations for auction houses and real estate auctions:

[1] Auctions must adhere to all federal and state laws and regulations.

[2] All auctions must be conducted by a professional auctioneer licensed by the State of Delaware and the Town of Fenwick Island.

[3] Any and all personal property being sold at auction must be stored and displayed inside the auction house. No such personal property may be stored or displayed outside of the auction house.

[4] No signs or devices which produce noise or sound, or which emit visible smoke, vapor, particles or odor shall be used for advertising purposes or to attract attention.

[5] A register of all buyers and sellers participating in an auction must be maintained at all times by the professional auctioneer responsible for conducting the auction. As part of said register, the professional auctioneer must also maintain an accurate list of all real and/or personal property bought and sold, together with a description of said real and/or personal property.

[6] All auctions must be completed by 9:30 p.m.

[7] No auctions of livestock or domestic, foreign and/or exotic animals are permitted.

(c) A license issued by the Town of Fenwick Island to a professional auctioneer may be suspended and/or revoked for any violation of the regulations for auction houses and real estate auctions set forth above. Such a suspension and/or revocation may also occur for reasons that include, but are not limited, to the following:

[1] Misleading or untruthful advertising.

[2] Flagrant misrepresentation of the quality or existence of the personal or real property being sold at auction.

[3] Knowingly using false bidders.

[4] Absent a good faith, bona fide dispute, failure to remit payment to the seller of any real or personal property sold at auction and/or failure to transfer any real or personal property sold at auction to the ultimate purchaser thereof.

(d) Inspection of auction houses. Town officials shall have the power to inspect, during reasonable business hours, any auction house for the purpose of determining compliance with this § 160-5A(10) or any other applicable provision of the Town Code, as

well as to determine compliance with state licensing or other regulatory requirements. During any such inspection, Town officials may secure and confiscate any evidence discovered that may be necessary for prosecution under this chapter. Town officials may, but shall not be obligated to, refer any suspected criminal activity to the proper police authorities.

(e) Violations and penalties. Any person or entity in violation of this [§ 160-5A\(10\)](#) shall be obligated to pay a civil fine in the amount of \$500 for the first violation. Subsequent violations shall be punishable by a fine in such amount of \$1,000 per violation. Each day that a violation continues shall be deemed to be a separate and additional violation for purposes of the civil fine imposed hereby. Any appeal of the civil fine imposed shall be lodged with the Fenwick Island Town Council within 10 days of receipt of written notice from the Town that the civil fine has been imposed. In the event of an appeal, the appealing party shall be given an opportunity to be heard and to present his case for rescission or reduction of the civil fine before the Town Council. The decision of the Town Council following any such appeal shall be final. Any and all civil fines imposed hereby shall be collectible in the same manner as delinquent taxes, and the Town shall be entitled to recover all costs and reasonable attorneys' fees incurred in connection with any such collection effort.

EXISTING:

B. Height regulations. No building shall exceed a height of 30 feet, except as provided in [§ 160-6A\(2\)](#)

PROPOSED:

B. Height regulations. No building shall exceed a height of 30 feet, except as provided in [§ 160-8A\(2\)](#).

EXISTING:

C. Area regulations. Same as [§ 160-4C](#) as to use for single-family dwellings. For uses other than residential, the front building limit line setback, side yard and rear yard requirements shall be as follows:

- (1) Front building limit line. The building limit line shall set back from the front lot line not less than 25 feet.
- (2) Side yard. There shall be side yards on each side not less than seven feet in width, except as provided in [§ 160-6A\(3\)](#) and [\(8\)](#), and except that, in the case of corner lots, the side yard adjacent to the side street shall have a minimum width of 15 feet.
- (3) Rear yard. There shall be a rear yard having a minimum depth of 10 feet.
- (4) The area between the front lot line and the front building limit line may be used for driveways only. The side yard and rear yard areas may be used for driveways and parking areas, provided, further, that only limited-access entrances and exits to such driveways and parking areas are permitted from the bordering streets. The limited-access entrances and exits shall be controlled by drop curbs or, where no curbs exist, by a fence, wall or other such structure or planting between such entrances and exits, and the parking areas shall comply with the parking regulations of this chapter. No part of any required building setback area in the front, rear, or side of any lot in the Commercial Zone may be covered or paved with impervious or semi-impervious materials such as concrete, asphalt, brick, flagstone, etc. Such coverings or paving existing at the time of enactment of this subsection may continue to be used and repaired as a nonconforming use, but may not be expanded in any horizontal dimension nor rebuilt or replaced with such materials.
- (5) Each motel/hotel permitted to be erected or altered hereafter shall occupy a lot(s) providing a minimum of 1,000 square feet of land area for each sleeping room therein, including sleeping rooms in any apartment included in the motel/hotel building.

PROPOSED:

(2) Side yard. There shall be side yards on each side not less than seven feet in width, except as provided in [§ 160-8A\(3\)](#) and [\(8\)](#), and except that, in the case of corner lots, the side yard adjacent to the side street shall have a minimum width of 15 feet.

EXISTING: (will remain the same – no change)

D. Fire regulations. All construction in the Commercial Zone must be approved by the State Fire Marshal, except individual single-family dwellings.

EXISTING: (will remain the same – no change)

E. Lighting. Lighting (inside and/or outside) on commercial properties must be arranged so as not to reflect or cause glare into any residential property where the intensity of light is strong enough to seriously disturb a person of normal sensibilities. This includes the lighting of permitted illuminated signs.

EXISTING: (will remain the same – no change)

§ 160-6. Parks Zone.

- A. Use regulations. Unless herein provided, no building or premises or site shall be used or any building or structure be hereafter erected, altered or repaired in the Parks Zone except for one or more of the following principal permitted uses:
1. Public athletics facilities.
 2. Playgrounds.
 3. Outdoor educational facilities.
 4. Public outdoor meetings.
 5. Public recreation.
 6. Public piers and docks.
- B. Accessory uses and accessory structures permitted:
1. Off-street parking and loading facilities.
 2. Other accessory uses which are incidental to recreational uses.
 3. Small utility buildings or other small storage structures used for storage of equipment and supplies used in connection with park related activities.
 4. The height of an accessory structure shall not exceed 15 feet above existing ground contour level at the accessory structure site location.
- C. Area and yard requirements:
1. Building structures, such as but not limited to, utility buildings, playground equipment, picnic tables, and gazebos shall meet the following minimum setbacks requirements:
 - a) Front yard setback – 20 feet from the front lot line.
 - b) Rear yard setback – 10 feet from the rear lot line.
 - c) Side yard setback - 5 feet from each side lot line.
 2. A fence not to exceed six feet in height shall be permitted to screen the park from adjacent residential properties. Such a fence shall not be completely solid, but shall have openings comprising approximately 20% to 30% of the total surface area of the fence in order to provide for the flow-through of air.
- D. Town Council may adopt by Resolution additional rules and regulations applicable to any park owned and/or operated by the Town. Additional rules and regulations applicable to any park that is privately owned may be imposed by the Town Council from time to time, but shall require an amendment to the zoning ordinances of the Town.

PROPOSED: (ADD NEW SECTION 160-7 AND RE-NUMBER FOLLOWING SECTIONS)

§ 160—7. Commercial Zone/Mixed Use.

A. Apartment Regulations/Mixed Use:

1. *One apartment per 6,500 square foot lot.*
2. *For building utilizing multiple lots, apartment shall be allowed as one apartment per 6,500 lot.*
3. *The number of apartments located within a mixed use building is restricted by the number of lots on which the building is constructed.*
4. *Two designated parking spaces per apartment.*
5. *Landlord shall supply a recycle bin and trash receptacle. No cans, bins or trash bags are allowed on any exterior area of the building.*
6. *All recycle bins and trash receptacles shall be screened from view of all public streets and residential areas with a type of screening such as fencing or landscaping.*
7. *Each apartment must be registered in the Town and the owner shall keep all information related to the unit current or risk revocation of permit.*
8. *Each apartment must be occupied by non-transient person(s) as tenant(s) on a long-term basis of not less than three months.*
9. *Each apartment shall contain a full kitchen, a bathroom plus a washer and dryer.*
10. *An apartment must be in compliance with Chapter 160-2B (Definitions and word use), definition of “Single-Family Dwelling”, items (1) (a), (b) and (c).*

EXISTING:

§ 160—6. General regulations; exceptions.

PROPOSED:

§ 160—8. General regulations; exceptions.

§ 160-8A(1) through § 160-8A(9) will be renumbered only

EXISTING:

§ 160-8. Off-street parking regulations.

A. Except as otherwise provided in this chapter, when any building or structure is hereafter erected or there is an addition to any building or structure which increases the square foot area of the building or structure or any building or structure or portion thereof is converted for the uses listed in Column 1 of the chart below, accessory off-street parking spaces shall be provided as required in Column 2 or Column 3 of the chart below or as required in subsequent sections of this chapter.

	Off-Street Parking Requirements		
	Use or Use Category	Spaces Required Per Basic Measuring Unit	Additional Requirements
	Single-family dwelling or townhouse	2 per dwelling	
	Church or temple, auditorium or place of assembly	1 per 5 seats or bench seating spaces	(Seats in main auditorium only)
	Public buildings such as public library, museum, art gallery or community center	10 per use	Plus 1 additional space for each 300 square feet of floor area
	Sanitarium, convalescent home, home for the aged or similar institution	1 per 5 patient beds	
	Motel/hotel [Amended 9-23-2005]	1 per sleeping room	Plus 1 for each 10 rooms or portion thereof
	Hospital	1 per 2 patient beds	
	Office or office building, post office, studio or clinic	1 per 200 square feet of floor area	6 spaces minimum, 10 spaces minimum for a clinic
	Funeral home	1 per 50 square feet of floor area excluding storage and work area	30 spaces minimum
	Restaurant or eatery [Amended 7-26-1996]	1 per 75 square feet of total patron area or 1 per 3 seats for patrons, whichever is greater	1 for every 2 employees on shift with most employees
	Retail store or personal service	1 per 200 square feet of total	Retail food stores over 4,000

	establishment and banks	floor area	square feet: 1 per 100 square feet of floor area
	Furniture or appliance store	1 per 300 square feet of floor area	6 spaces minimum
	Tennis courts	4 for 1 court and 2 for each additional court	
	Swimming pool in connection with and on the same site as a motel or hotel	for other than	20 spaces minimum if used motel or hotel residents
	General service or repair establishment, printing, publishing, plumbing, heating, broadcasting station, similar establishment	1 per 2 employees on premises	Plus space for storage of trucks or other vehicles used in connection or with the business

PROPOSED:

§ 160-10. Off-street parking regulations.

A. Except as otherwise provided in this chapter, when any building or structure is hereafter erected or there is an addition to any building or structure which increases the square foot area of the building or structure or any building or structure or portion thereof is converted for the uses listed in Column 1 of the chart below, accessory off-street parking spaces shall be provided as required in Column 2 or Column 3 of the chart below or as required in subsequent sections of this chapter.

Off-Street Parking Requirements			
	Use or Use Category	Spaces Required Per Basic Measuring Unit	Additional Requirements
	Single-family dwelling or townhouse	2 per dwelling	
	Church or temple, auditorium or place of assembly	1 per 5 seats or bench seating spaces	(Seats in main auditorium only)
	Public buildings such as public library, museum, art gallery or community center	10 per use	Plus 1 additional space for each 300 square feet of floor area
	Motel/hotel	1 per sleeping <i>unit</i>	Plus 1 for each 10 rooms or portion thereof
	Professional Services Building	1 per 200 square feet of floor area	6 spaces minimum, 10 spaces minimum for a clinic
	Restaurant or eatery	1 per 100 square feet of total patron area	
	Retail store	1 per 300 square feet of floor area	

EXISTING:

C. Location of parking spaces.

(1) Residential. Parking spaces shall be located on the same lot(s) with the structure they are intended to serve in one of the following ways:

- (a) Within a permitted garage or carport.
- (b) On an open area of the lot.

(2) Commercial. Parking spaces shall be located on the same lot(s) with the structure they are intended to serve in one of the following ways:

- (a) Within a permitted garage or carport.
- (b) On a open area of the lot, provided that the parking area(s) required for any building or structure hereafter erected shall be setback a distance of not less than three feet from any lot lines and shall be set back a distance of not less than three feet from the structure.
- (c) If approved by the Town Council, open parking spaces required for a structure may be located on a lot(s) other than those intended to be served, provided that:

[1] It is not practicable to locate such spaces in accordance with Subsection **C(2)** because of:

- [a] Unusual shape, size or dimensions of the lot;
- [b] The lack of an alley or the lack of appropriate ingress or egress facilities through existing or proposed alleys or streets; or
- [c] Traffic hazards.

[2] When the accessory parking spaces are to be located elsewhere than on the lot upon which the structure they are intended to serve is located, such parking on adjacent lot or lots separated only by an alley from the lot upon which the structure is located shall be preferred.

[3] Such spaces are so located as to furnish reasonable and convenient parking facilities for the occupants or guests of the structure for which they are designed to serve, but in no case shall they be farther than 200 feet from the closest lot line of the lot upon which the structure is located.

[4] The Council may impose conditions as to screening, coping, setbacks, fences, the location of entrances and exits or any other requirement it shall deem necessary to assure the continued provision and maintenance of such spaces.

PROPOSED:

C. Location of parking spaces.

(1) Residential. Parking spaces shall be located on the same lot(s) with the structure they are intended to serve in one of the following ways:

- (a) Within a permitted garage or carport.*
- (b) On an open area of the lot.*

(2) Commercial. Parking spaces shall be located on the same lot(s) with the structure they are intended to serve in one of the following ways:

- (a) Within a permitted garage or carport.*
- (b) On a open area of the lot, provided that the parking area(s) required for any building or structure hereafter erected shall be setback a distance of not less than three feet from any lot lines and shall be set back a distance of not less than three feet from the structure.*
- (c) If approved by the Town Council, open parking spaces required for a structure may be located on a lot(s) other than those intended to be served, provided that:*

*[1] It is not practicable to locate such spaces in accordance with Subsection **C(2)** because of:*

- [a] Unusual shape, size or dimensions of the lot;*
- [b] The lack of an alley or the lack of appropriate ingress or egress facilities through existing or proposed alleys or streets; or*
- [c] Traffic hazards.*

[2] The Council may impose conditions as to screening, coping, setbacks, fences, the location of entrances and exits or any other requirement it shall deem necessary to assure the continued provision and maintenance of such spaces.

EXISTING:

D. Access, maintenance and operation

(3) Each parking space in a Commercial Zone shall be individually accessible at all times from streets or alleys through means of ingress and egress, and no parking space will be authorized or approved if egress requires the vehicle to back directly, in order to exit, onto any of the following: Delaware Route 1, Delaware Avenue, Maryland Avenue or **Virginia Avenue**.

PROPOSED:

D. Access, maintenance and operation

(3) Each parking space in a Commercial Zone shall be individually accessible at all times from streets or alleys through means of ingress and egress, and no parking space will be authorized or approved if egress requires the vehicle to back directly, in order to exit, onto any of the following: Delaware Route 1, Delaware Avenue, Maryland Avenue or **Island Street**.

§ 160-13. Violations and penalties.

EXISTING:

A violation of the provisions of this chapter, or the failure to comply with any of its requirements, shall be punishable by a fine ***of not less than \$25, nor more than \$2,500***, for each offense, plus court costs. Whenever a person shall have been notified in writing, certified mail, return receipt requested, by the Building Official or other Town official or by service of a summons of a violation of this chapter, each day of continued violation shall be considered as a separate offense. The owner or tenant of any building, structure, premises or any part thereof, and any architect, builder, contractor, employee or agent for one of the aforementioned persons, or any other person who commits, furthers, participates in, assists in, or maintains any such violation may be separately convicted and be subject to the same penalties provided herein. Nothing in this section shall be construed to prevent or otherwise prohibit the prosecution of the same violation occurring on a date subsequent to the conviction. The commission, allowance or participation in any activity defined as a violation of this chapter shall be deemed and is hereby declared to be a common and public nuisance. The Town Council may institute appropriate proceedings to restrain or enjoin further construction in violation of the chapter and/or proceedings to abate any violation, and to require the removal of the violation. In this event, the Town Council shall be entitled to collect from the offending party or parties the Town's reasonable attorneys fees, legal costs and expenses and court costs, as a part of any judgment or award in a civil action brought to restrain or enjoin a violation. Civil remedies are in addition to and not in lieu of the penalties provided herein.

PROPOSED:

A violation of the provisions of this chapter, or the failure to comply with any of its requirements, shall be punishable by a fine **\$100** for each offense, plus court costs. Whenever a person shall have been notified in writing, certified mail, return receipt requested, by the Building Official or other Town official or by service of a summons of a violation of this chapter, each day of continued violation shall be considered as a separate offense. The owner or tenant of any building, structure, premises or any part thereof, and any architect, builder, contractor, employee or agent for one of the aforementioned persons, or any other person who commits, furthers, participates in, assists in, or maintains any such violation may be separately convicted and be subject to the same penalties provided herein. Nothing in this section shall be construed to prevent or otherwise prohibit the prosecution of the same violation occurring on a date subsequent to the conviction. The commission, allowance or participation in any activity defined as a violation of this chapter shall be deemed and is hereby declared to be a common and public nuisance. The Town Council may institute appropriate proceedings to restrain or enjoin further construction in violation of the chapter and/or proceedings to abate any violation, and to require the removal of the violation. In this event, the Town Council shall be entitled to collect from the offending party or parties the Town's reasonable attorneys fees, legal costs and expenses and court costs, as a part of any judgment or award in a civil action brought to restrain or enjoin a violation. Civil remedies are in addition to and not in lieu of the penalties provided herein.

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